

Central Administrative Tribunal  
Principal Bench, New Delhi

(7)

OA No.924/91

New Delhi: March 27, 1995.

Hon'ble Mr S.R.Adige, Member (A)  
Hon'ble Dr R.K.Saxena, Member (J)

Shri B.K.Mishra  
R/o Village Madhusudanpur  
P.O. Shahzadpur, P.S. Nathnagar  
Dist. Bhagalpur

...Applicant

(By Advocate: Shri P.P.Khurana)

Versus

Union of India through

1. The Secretary  
Dept. of Revenue  
Ministry of Finance  
North Block  
New Delhi.
2. Central Board of Direct Taxes  
(Through its Chairman)  
North Block  
New Delhi.

...Respondents

(By Advocate: Shri R.S.Aggarwal)

J U D G E M E N T

Hon'ble Mr S.R.Adige, Member (A)

In this application, Shri B.K.Mishra, Income Tax Officer (Class-II) has prayed for a direction to the respondents to promote him as Assistant Commissioner, Income Tax, in accordance with DPC recommendations, w.e.f. the date his immediate junior was promoted, with consequential benefits.

2. The applicant who was appointed as Inspector of Income Tax in January 1968 was promoted as Income Tax Officer, Class II in the year 1975. He has contended that he was eligible for promotion as Assistant Commissioner of Income Tax. A DPC for the same met in December 1988/january 1989 and recommended the names of a number of officers, but the applicant's name was not included in the list of officers recommended for promotion by the DPC. Subsequently, another DPC was

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held in January/February 1990 and another lot of officers were promoted, but again the applicant's name was not included in the list of promotees. Subsequently, yet another DPC was held in January/February 1991 and on the basis of the recommendations of the said DPC, yet another set of Income Tax Officers were promoted, but again the applicant's name was excluded from the list of promotees.

3. The applicant admits that while posted as Income Tax Officer at Bhagalpur with additional charge of Deoghar Office, his office and residential premises were raided by the CBI on 25/26.10.1988. He states that nothing incriminating was found during the course of the raid and the CBI submitted its final report in the Court of Special Judge on 18.6.1990 which was accepted by the Special Judge and proceedings against the applicant were dropped on 3.9.1990. The applicant states that apart from that, he had not been issued any charge-sheet etc. for any alleged misconduct whatsoever. He further states that he had been representing against his supersession from August 1989 itself, but had not received any reply from the respondents till 8.1.1991, on which date, he was informed that though his name was duly considered for promotion by the DPC, but the said DPC did not recommend his name for promotion. He states that again on 14.1.1991, he was informed that the DPC which had met in January/February 1990, had duly considered his name, but the recommendations of the said DPC in his case were kept in a 'sealed cover', and on review it was not found possible to open the sealed cover for the present. He contends that on subsequent occasions also, upon his representation, he was informed that his case had been duly considered for promotion by the DPC, but those recommendations had been kept in a sealed cover. He contends that it was wrong on the part of the respondents to link the issue of the CBI raids which took place in 1988 with the applicant's promotion, for the reason that the raids by itself gave no authority to the respondents to put his case for

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promotion in a sealed cover. He states that no charge-sheet/memo has been served upon him and therefore his was no case where a sealed cover procedure was required to be adopted.

4. The respondents in their reply stated that the applicant was considered for promotion as Assistant Commissioner of Income Tax by the DPC which met in December 1988/January 1989 and again by subsequent DPCs which met in January/February 1990 and March 1991. On such occasions the recommendations of the DPC in the applicant's case were kept in sealed cover<sup>3</sup> as his integrity was not certified by the Chief Vigilance Officer, in the light of FIR registered against the applicant on 21.10.1988 on the charge of possession of disproportionate assets. The respondents state that it is wrong to state that nothing incriminating was found during the course of the search. The CBI in their investigation report concluded that the applicant was in possession of disproportionate assets of Rs. 59,783/-, but the evidence was not sufficient to initiate criminal proceedings against the applicant. The CBI accordingly recommended that<sup>the</sup> Department may take such action as it deemed fit for possessing disproportionate assets. The CBI also recommended initiation of regular departmental action for failure of the officer to intimate an investment of Rs.50,000/- on repairs of a house property and on the purchase of FDRs worth Rs. 30,000. The respondents state that the applicant's representation was duly considered and he was informed that it was not possible to promote him as the DPC proceedings have<sup>3</sup> been kept in a sealed cover, in accordance with the procedure adopted in terms of OM No.22011/2/86-Estt.(A) dated 12.1.88, which, according to the respondents, was fully applicable in the present case.

5. This OA was filed on 18.4.1991 and came up for hearing on 19.4.1991 on which date the Tribunal passed<sup>an</sup> interim order<sup>3</sup> directing the respondents to open the sealed cover immediately and give effect to the recommendations made by the DPC in regard to suitability of the

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applicant for promotion within a period of one month from the date of receipt of copy of that interim orders. It was made clear that any promotion would be subject to the result of this OA.

6. Shri P.P.Khurana appeared today for the applicant and Shri R.S.Aggarwal for the respondents.

7. Shri Khurana invited our attention to the respondents' order dated 29.7.1991, a copy of which has been taken on record, from which it appears that in pursuance of this Tribunal's order dated 19.4.1991, the applicant has been deemed to have been appointed as Assistant Commissioner, Income Tax (Junior Scale) w.e.f. 22.3.1990. The order states that the appointment is subject to final decision in L.P.A.No.1059 of 1985 in the case of Shri A.P.Aggarwal and others Vs. CIT Patiala and Haryana and others pending before the High Court of Punjab and also final outcome of the present OA, and SLP, if any, filed by the Department against the Tribunal's interim order dated 9.4.1991. Shri Khurana also invited our attention to the respondents' order dated 12/14 December 1994, a copy of which has been taken on record, exonerating the applicant from the charges of possessing disproportionate assets to the extent of Rs. 59,783, and failure to take permission/give intimation regarding investment of Rs. 50,000 for renovation of house property, and to give details of FDRs worth Rs. 30,000 in the name of the applicant's daughter.

8. It appears that Hon'ble Supreme Court was pleased to dismiss SLP No.12731/91 filed by the respondents against the Tribunal's interim order dated 19.4.1991 vide their orders dated 20.9.1991.

9. In view of the fact that exoneration of the applicant from the charges in the disciplinary proceedings against him stands uncontroverted, and the applicant has already been promoted in accordance with the Tribunal's interim orders dated 19.4.1991, the challenge to which was rejected by the Hon'ble Supreme Court vide their orders dated 20.9.91, this OA succeeds and is allowed. No order as to costs.

(Dr.R.K.Saxena)  
Member(J)

(S.R.Adige)  
Member(A)